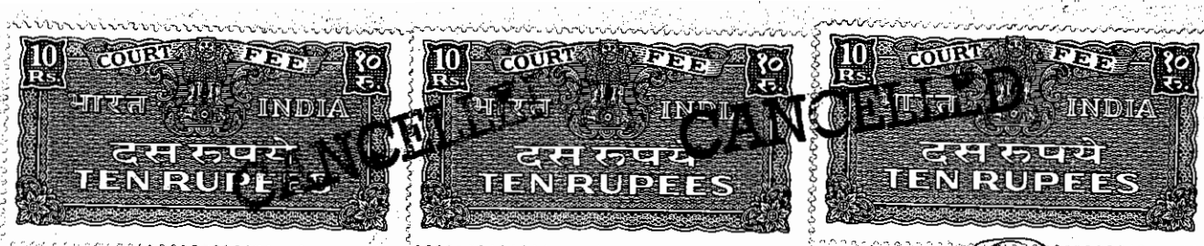

(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHHATTISGARH

WRIT PETITION NO. 2895 /2003

PETITIONERS

1. **Administrator,**
Lahidhi Multipurpose Higher Secondary School, Chirmiri, P.O. – Chirmiri District – Korea (C.G.)
2. **Principal,**
Lahidhi Multipurpose Higher Secondary School, Chirmiri, P.O. – Chirmiri District – Korea (C.G.)

P. R. No. 9660/03
Presented by Shri Jaiprakash Jaiswal
dated 05.09.03

VERSUS

RESPONDENTS

1. **Shri Laxmi Narayan Jaiswal**
S/o. Shri Mahadev Prasad Jaiswal, R/o. Bada Bajar, C/O. Sarswati Photo Copy and Typing Center Chirmiri, District – Korea (C.G.)
2. **Controlling Authority,**
Under the Payment of Gratuity Act., Through Labour Commissioner Office, Korba (C.G.)

WRIT PETITION UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA

73

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.2895/03

Administrator & ano.

Vs.

Shri Laxmi Narayan Jaiswal & ano.

ORDER

Post for: 20/10/2004.

Sd/-
Fakhruddin
Judge

74

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.2895/03

Administrator & ano.

Vs.

Shri Laxmi Narayan Jaiswal & ano.

Shri Vineet Pandey for the petitioners.

Shri R.K. Jaiswal for respondent no.1.

O R D E R

The petitioners have filed this petition against the order passed by the controlling authority under the Payment of Gratuity Act dated 4-12-2002.

2. Briefly stated the facts of the case are that the respondent no. 1 was working in the Lahidhi Multipurpose Higher Secondary School, Chirmiri and after his retirement, he moved an application for payment of Gratuity before the Controlling Authority under the Payment of Gratuity Act. The learned Controlling Authority vide the impugned order dated 1-12-2002 has allowed the same and directed the petitioners to pay the gratuity amount of Rs. 2,22,339/- with 10% interest. Against the said order, the petitioners have filed this petition.

3. Counsel for the respondent no. 1 however submitted that an alternative remedy of appeal is available to the petitioners but they directly approached this Court, therefore, the petition is not maintainable.

4. Counsel for the petitioners relying upon the decision in the case of State of U.P. & Ors. –v- M/s. Indian Hume Pipe Co. Ltd. (U.J.(S.C.) 1977 Page 219 submitted that it has been held that there is no rule of law that the High Court should

75

not entertain a writ petition where an alternative remedy is available to a party and further that it is always a matter of discretion with the Court and if the discretion has been exercised by the High Court not unreasonably or perversely, it is the settled practice of this Court not to interfere with the exercise of discretion by the High Court.

5. This Court has also dealt with the matter in the cases of Gurumukh Singh Hora –v- State of Chhattisgarh and others (2004(3) M.P.H.T. 29 (C.G.) and Smt. Ranibai –v- State of C.G. and others (2002(2) C.G.L.J. 57). In Smt. Ranibai (Supra), it has been held in para 21 of the judgment as under:

> *"The existence of alternative remedy is not an absolute bar to the relief. It is one of the circumstances, which the Court has to take into consideration while exercising its discretionary power under Article 226. Alternative remedy does not take away the jurisdiction of the Court to grant relief in exceptional circumstances."*

6. In view of the above discussions and judgment of the Apex Court and in view of the facts and circumstances of the case, the objection regarding maintainability is not sustainable and it is held that this petition is maintainable.

7. The question germane for decision is as to whether the respondent no. 1 who is a teacher is entitled for payment of gratuity. This question has now been decided by Hon'ble Supreme Court in a decision in case of Ahmedabad Pvt. Primary Teachers' Association –v- Administrative Officer and ors. (2004 (1) Supreme 276). In the judgment it has been held that the teachers who are mainly employed for imparting education are not intended to be covered for extending gratuity benefits under the Act. Teachers do not answer description of being employees who are 'skilled', 'semi-skilled' or 'unskilled'. These three words used in association with each order intend to convey that a person who is 'unskilled' is

TC

one who is not 'skilled' and a person who is 'semi-skilled' may be one who falls between two categories meaning he is neither fully skilled nor unskilled."

8. The respondent no.1 does not answer description of being employee who is skilled, semi-skilled or unskilled.

9. In view of the settled legal position as laid down by the Hon'ble Supreme Court in Ahmedabad Pvt. Primary Teachers' Association, the impugned order passed by the Controlling Authority granting gratuity is not sustainable and liable to be set aside.

10. Accordingly, the petition is allowed and impugned order dated 4/12/2002 passed by the Controlling Authority is set aside.

Sd/-
Fakhruddin
Judge

P/-